

**For information
on 25 May 2018**

**Legislative Council Subcommittee on Issues Relating to Shopping Centres,
Markets and Carparks in Public Rental Housing Estates and
Home Ownership Scheme Estates**

**The Hong Kong Housing Authority (HA)'s
Responsibilities to Provide Suitable Amenities Ancillary to Housing
under the Housing Ordinance (Cap. 283)**

Purpose

This paper briefs Members on the responsibilities of the Hong Kong Housing Authority (HA) under the Housing Ordinance (Cap. 283) to provide suitable amenities ancillary to housing.

2. The Government has explained HA's duties and work on this front to the Legislative Council (LegCo) on a number of occasions¹. As per the Subcommittee's request, we set out the key aspects in the ensuing paragraphs.

¹ Members may refer to the following papers/ speeches:

- (i) Reply by the Secretary for Transport and Housing to the question of "Securing the Provision of amenities ancillary to housing" at the LegCo meeting on 16 May 2018;
- (ii) Reply by the Secretary for Transport and Housing to the question of "Commercial facilities divested by Hong Kong Housing Authority" at the LegCo meeting on 17 January 2018;
- (iii) Supplementary information paper submitted by the Transport and Housing Bureau to the LegCo Panel on Housing in January 2018 (LC Paper No. CB(1)437/17-18(01));
- (iv) Reply by the Secretary for Transport and Housing to the question of "The duty of the Housing Authority to provide amenities ancillary to housing" at the LegCo meeting on 6 December 2017;
- (v) Response by the Secretary for Transport and Housing to the motion debate on "Vigorously promoting healthy market competition to counteract the market dominance of Link REIT" at the LegCo meeting on 23 November 2016;
- (vi) Reply by the Secretary for Development to the question of "Compliance with conditions in relevant land leases by owners of car parks in public housing estates" at the LegCo meeting on 1 June 2016; and
- (vii) Discussion paper on "Non-profit making organisations operating in premises subject to Welfare Letting Covenant" for the LegCo Panel on Housing meeting on 10 May 2016 (LC Paper No. CB(1)868/15-16(08)).

3. HA divested 180 properties in 2005 through The Link Real Estate Investment Trust (The Link) (now known as Link Real Estate Investment Trust (Link)), including retail and carparking facilities, in order to focus on its core function of providing subsidised public housing and improve its financial position in the short-to-medium term with proceeds from divestment. It was considered that the efficiency of the commercial facilities would also be enhanced under the operation of a private entity in accordance with commercial principles.

Housing Ordinance

4. Under section 4(1) of the Housing Ordinance, HA is required to secure the provision of housing and “such amenities ancillary thereto as the Authority thinks fit” for the persons concerned. When handing down its Judgement in 2005 on a related judicial review case, the Court of Final Appeal (CFA) affirmed that the divestment plan by HA was consistent with the objectives as laid down in section 4(1) above. According to CFA, it was not stipulated in the Housing Ordinance that tenants of public rental housing had any statutory right to the continued retention and control by HA of the facilities while the tenants were still using the facilities. HA had already secured the provision of such facilities, even if they were provided by a third party over whom HA had no control. In reaching its conclusions, CFA noted that a market-oriented commercial approach would be adopted in operating the divested properties, whereas HA’s approach at that time might not be in line with private sector practice.

5. CFA was aware that HA’s divested retail and carparking facilities were subject to the conditions in the land leases. Any change to the land use would require an application for modification of the lease conditions. In addition, HA has certain covenants including requiring owners to let out designated units in the properties at concessionary rent for the operation of certain social welfare facilities. CFA was also aware of the fact that there might be changes in the operation of the relevant facilities, such as the tenant trade mix.

Restrictions on Divested Properties

6. Same as other private property owners, owners of divested properties are governed by the relevant legal requirements, land lease conditions and the relevant restrictive covenants.

(1) Legal Requirements

7. Owners of divested properties shall, depending on the actual circumstances, comply with the legal requirements during the operation of such properties. For example, the uses of the properties shall comply with the statutory plans prepared and published by the Town Planning Board under the Town Planning Ordinance, while addition and alteration works shall be approved in accordance with the Buildings Ordinance, etc.

(2) Land Lease Conditions

8. In respect of land leases, as mentioned in the supplementary information paper submitted by the Government to the Subcommittee in March 2018 (LC Paper No. CB(4)801/17-18(01)), the Lands Department (LandsD), in the capacity of the landlord, handles the leased land under the conditions of the land leases. Land uses of the lots are generally specified in the lease conditions. Owners can only change the land use upon obtaining the prior consent of other owners of the lot as well as the approval of LandsD. As with other private properties, LandsD mainly acts on complaints, referrals or enquiries about suspected breaches of the leases of the divested properties by conducting inspections and taking follow-up actions in accordance with the existing procedures. Depending on the circumstances, LandsD will also consult the relevant policy bureaux/ government departments and seek legal advice. If breaches of the lease conditions are confirmed, LandsD will take appropriate lease enforcement actions.

9. Generally speaking, if breaches of the lease conditions are established, LandsD will issue warning letters to demand the owners to rectify the breaches or process the applications made by owners for regularisation based on the actual circumstances. Where the breaches have not been rectified or regularised, LandsD will register the warning letters at the Land Registry (LR) (commonly known as “imposing an encumbrance”), and, where

necessary, take further lease enforcement actions including re-entry of land or vesting the relevant interests in The Financial Secretary Incorporated pursuant to the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance.

(3) Deeds of Mutual Covenant (DMC)

10. There are provisions under the DMCs about the management and maintenance of common areas and recreational facilities etc., in housing estates/ courts to ensure that the owners will discharge their responsibilities. For example, in accordance with the provisions under DMCs, owners are obliged to make available the recreational facilities ancillary to the commercial facilities for use by residents of the housing estates and courts, as well as properly manage and maintain such facilities and the access thereto. The daily management work of the housing estates/ courts are usually performed by the management company. The DMC manager can also require the owners to comply with the provisions under DMCs, including the conditions and limitations set out in the relevant land leases.

11. HA, as one of the owners of housing estates, maintains communication with other owners on matters relating to the management of these estates, with a view to protecting HA's rights. Any suspected breach of land leases identified by HA will be referred to DMC Managers, Owners' Corporation and the relevant District Lands Offices for follow-up.

(4) Restrictive Covenants

12. The assignment deeds of the divested properties also contain, on a case by case basis, certain restrictive covenants, including retail covenants, carparking covenants and welfare-letting covenants. These assignment deeds have been registered at LR.

13. Under the retail covenant, retail facilities in housing estates or courts shall not be disposed of except as a whole, i.e. individual shops in the facilities cannot be disposed of separately. It is stipulated in the covenant that the covenant will remain effective so long as HA has any interest (including residential units), other than the retail facilities, in the relevant housing estates or courts.

14. Under the carparking covenant, the carparking facilities in the housing estates or courts shall not be disposed of except as a whole. It is specified in the covenant that the covenant shall cease to have effect when HA sells any residential units in the remaining parts of the housing estates or courts.

15. Under the welfare-letting covenant, certain designated units in individual divested properties shall be let out to non-profit-making organisations nominated by designated nominating authorities at concessionary rent or 50% of the market rent as assessed by HA for the operation of purposes such as social welfare or education facilities. The covenant also stipulates that the owners shall sign tenancy agreements with such non-profit-making organisations for a tenancy period of three years. After the end of the three-year tenancy period, the owners shall continue to let out such units to the nominated non-profit-making organisations for the operation of social welfare or education facilities, etc.

16. Concessionary rent refers to the level of rent determined by HA which is applicable to units for welfare or similar usages in properties owned or control and managed by HA. HA evaluates such rent level from time to time. The relevant owners of the divested properties are only allowed to charge the relevant organisations the concessionary rent determined by HA. No additional management fee should be charged, otherwise HA will regard such acts as breaches of the covenants. In an effort to safeguard its legal rights, HA will take actions as appropriate in case an owner fails to comply with the restrictive covenants.

17. As in any property transactions, the buyers and vendors of the divested properties are obliged to clarify the rights and obligations associated with the properties, including any restrictive covenants. Legal advice shall be sought as and when necessary. Any potential or new buyer may conduct a search of the assignment deeds at LR, thereby understand clearly that restrictive covenants ought to be included in the purchase and resale of commercial facilities. Any owners of the divested properties are obliged to observe their duties under such covenants.

Conclusion

18. As mentioned by the Government on a number of public occasions, as long as the relevant legal requirements and land lease conditions are complied with, the Government cannot interfere with the owners' lawful right to use their properties. Likewise, as long as the owners concerned do not breach the aforementioned covenants with HA, HA cannot and will not interfere with their day-to-day operation and commercial decisions, including disposal of properties, leasing arrangements, etc. However, if it is confirmed that the owner concerned is in breach of any laws, land lease conditions or covenants with HA, the relevant government departments and HA will certainly pursue the matter seriously and take appropriate actions.

19. Same as other members of the general public, the daily needs of the public housing residents for shopping, community services and carparking are met by different means according to the actual circumstances, including the facilities and services provided by various public and private organisations. In the paper entitled "Policy and Measures to Address Demand of Public Housing Residents for Commercial Facilities" submitted by the Government to the Subcommittee in February 2018 (LC Paper No. CB(4)634/17-18(01)), we have already given an account of the related facilities and services, such as public markets, bazzars, carparking facilities, HA's commercial facilities and the relevant measures, etc. Those information is not repeated here.

Transport and Housing Bureau
May 2018